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STATE ADVISORY COUNCIL

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ANNUAL REPORT

Year ending June 30, 1980

1980

GOVERNMENT DOCUMENTS
COLLECTION

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THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF EMPLOYMENT SECURITY



The Commonwealth of Massachusetts

Division of Employment Security

State Advisory Council

Charles F. Hurley Employment Security Building

Government Center, Boston, Mass. 02114

MEMBERSHIP STATE ADVISORY COUNCIL

Frank R. Debar	Chairman
Sam F. Irvin	Representing the Public
Philip A. Dunn	Representing the Public
D. Rooney	Representing Employers
William G. Cacciapuoti	Representing Employers
Norman F. Wheeler	Representing Employees

August 22, 1980

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in the General Court assembled:

In accordance with Section 62 of Chapter 151A of the General Court Laws, the State Advisory Council of the Division of Employment Security submits its Annual Report to the General Court for the fiscal year July 1, 1979 to June 30, 1980.

Sincerely,

A handwritten signature in cursive script that reads "Frank R. Debar".

Frank R. Debar, Chairman
State Advisory Council

Attachment

THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF EMPLOYMENT SECURITY
STATE ADVISORY COUNCIL

ANNUAL REPORT
Fiscal Year Ending June 30, 1980

Frank R. Debar, Chairman



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MEMBERSHIP

ON JUNE 30, 1980

ADVISORY COUNCIL

Representing the Public

Frank R. Debar, Chairman

Representing the Public

William R. Irvin

Representing Employers

Joseph A. Dunn

Representing Employers

John R. Rooney

Representing Employees

Donald G. Cacciapuoti

Representing Employees

Eleanor F. Wheeler

THE COMMONWEALTH OF MASSACHUSETTS
STATE ADVISORY COUNCIL
DIVISION OF EMPLOYMENT SECURITY

ANNUAL REPORT
July 1, 1979 - June 30, 1980

LEGISLATION

In accordance with Section 62 of Chapter 151A of the General Laws, the State Advisory Council is charged with the responsibility of investigating and studying all legislative proposals for amendments or additions to the Employment Security Law. The Council is required to report to the General Court its comments and recommendations relative to such proposals. Herewith is a digest of the legislative status of thirty-eight bills concerned with Chapter 151A, General Laws during the year ending June 30, 1980.

Incorporated into House Order No.6259 were twenty-nine of these bills, with recommendations for study. Subsequent legislative action incorporated the aforementioned House Order No.6259, House No.1319 and House No.3851 into House No.6818 which was committed to the Rules Committee and "died" with prorogation of the General Court on November 4, 1979.

Four bills, Senate No.1838, House No.3827, House No.6193 (formerly H.3840) and House No.6290 (formerly H.3826) were in the House Committee on Ways and Means and also "died" upon prorogation. Senate No.55 received an adverse report (ought not to pass) by the Committee on Commerce and Labor and was "killed" by legislative action.

Two bills, House No.3848 and House No.6855 (formerly Senate No.54) were enacted as Chapter 642, Acts of 1979 and Chapter 768, Acts of 1979, respectively; with the former entitled, "An Act Relative To The Employment Security Law" and the latter designated as "An Act Relative To The Financing Provisions Of The Employment Security Law".

In addition to the above, the Advisory Council also devoted portions of several meetings to a preliminary review of six proposed bills which Director J. F. Hodgman filed with the Secretary of the Commonwealth, for consideration by the 1980 Session of the Legislature. The Council will undertake its customary in-depth review and evaluation of these proposals prior to submitting its recommendations in 1980 to the appropriate Committee of the Legislature. The subject matter of these proposals, are as follows:

1. An Act Relative To Staffing Of The Division of Employment Security
2. An Act To Increase The Rate Of Interest For Failing To Pay Contributions Timely Under The Employment Security Law
3. An Act Relative To Retirement Benefits Under The Employment Security Law

4. An Act Relative To The Waiver Of The Recovery Of Overpayment Provisions Of The Employment Security Law
5. An Act Providing For The Charging Of Certain Unemployment Benefits In Conformity With Federal Requirements
6. An Act To Strengthen The Administration Of The Employment Security Law

In conformance with its responsibilities as designated by Section 62 of Chapter 151A, General Laws, the Advisory Council reviewed and evaluated several proposals for amendments to the Employment Security Law pending before the 1980 session of the Great and General Court. As is further required, the Council submitted its recommendations to the appropriate Legislative Committee and recorded its positions on these bills as follows: - -

Senate No.149, "An Act To Protect Employees Engaged In Labor Practices"

The Advisory Council voted unanimously to recommend against passage of S.149. It is the opinion of the Members that there is no necessary connection between a claimant's involvement in a situation inherent in this bill and any overpayment of benefits to that individual. Also, the Members find no relevant relationship between such involvement and a claimant being without fault in receiving benefits to which he/she was not entitled.

House Bill No.80, "An Act To Increase The Rate Of Interest For Failing To Pay Contributions Timely Under The Employment Security Law"

The Advisory Council voted unanimously to recommend passage of this bill. The present interest rate (8%) on unpaid contributions has proven to be ineffective in encouraging voluntary compliance by a small, but substantial group of employers. A significant number of these employers in this group are chronic violators. Under currently prevailing rates of interest an employer may choose to defer payment of his taxes due and payable, rather than to secure funds from a commercial lending institution. This non-compliance adds considerably to the Division's administrative expenses and can also result in holding up payment of benefits to claimants.

House Bill No.82 (amended as H.6339), "An Act Relative To The Waiver Of The Recovery Of Overpayment Provisions Of The Employment Security Law"

The Advisory Council voted unanimously to recommend against passage of this bill. The provisions of the Employment Security Law for waiver of recovery of certain overpayment of benefits is becoming increasingly expensive for employers who bear the cost of benefits, and who generally are not at fault in any overpayment. It is also becoming increasingly difficult and expensive for the Division of Employment Security to administer.

There is no Federal requirement for a waiver provision and most state laws do not contain one. Since there is no evident urgent reason for retention of this provision in Massachusetts, it is recommended, for the reasons noted above, that it be removed from the Law.

House Bill No.283, "An Act Further Clarifying The Payment Of Benefits Relative To A Person Who Is Incapacitated By Reason Of Mental Illness"

The Advisory Council voted unanimously to recommend passage of this bill. The change in terminology as expressed in this bill would have no adverse effect on the eligibility of an individual or in the operations of the Division.

House Bill No.6076, "An Act Relative To Retirement Under The Employment Security Law"

The Advisory Council voted unanimously to recommend passage of this bill. House Bill No.6076 was originally filed as House Bill No.81 by the Director of the Division of Employment Security in order to conform with Federal requirements effective April 6, 1980. Unless our law is brought into timely conformity, employers will be subject to additional Federal taxes of about \$300M annually and the Division will incur denial of Federal funds for administration. It is expected that Congress will modify the Federal law to allow States the option to offset pensions wholly, or in part, and legislation language has been incorporated to provide for this situation as reflected in H.6076 and in the revision forwarded to the legislative Committee on Commerce and Labor by Director Eugene J. Doody.

With these bills presently pending in various legislative stages, the Advisory Council will continue to follow closely any subsequent action that takes place and the potential effect that passage of any specific bill may have on Chapter 151A, General Laws.

MEETING WITH DIRECTOR

Director John F. Hodgman attended a meeting of the State Advisory Council on August 8, 1979. Mr. Hodgman indicated the purpose of his meeting with the Council Members was to discuss regulations to be drafted relative to the waiver of overpayments of unemployment compensation benefits. He also stated he would provide the Members with the background that led to the promulgation of these regulations which require the approval of the Advisory Council in accordance with Section 9J, Chapter 23 of the General Laws. Director Hodgman said the need for these regulations developed as a result of a lawsuit (Hanlon vs Hodgman, Director, Division of Employment Security) filed approximately a year ago in Federal District Court, with the plaintiffs represented by the Massachusetts Law Reform Institute.

It was the contention of the plaintiffs that Section 69(c) of Chapter 151A does not allow for a claimant's appeal, through due process, on a Director's decision in an overpayment issue in which a waive of overpayment is denied.

Mr. Hodgman stated his predecessor, Director John D. Crosier, had periodically received requests for waivers under Section 69(c) and had, as a matter of policy, not granted waivers except in extreme hardship cases. When he (Director Hodgman) had been appointed, he reviewed the decisions made by Mr. Crosier, found them basically sound, and therefore continued the policy of Mr. Crosier relative to the granting of such waivers.

The Director said the case was referred to the Massachusetts Attorney General's office and both DES Counsel and the Attorney General's Staff decided to defend the lawsuit. He further stated that about the same time the plaintiff filed against the DES, the Massachusetts Law Reform Institute wrote requesting opinions from the Unemployment Insurance Administration of the U.S. Department of Labor and the Solicitor's office of the U.S. Department of Labor. The Unemployment Insurance Administration informed him of the plaintiff's request but he was unaware of the Institute's contacting the Solicitor's office.

The Unemployment Insurance Administration's position was that this was an issue essentially to be defined by State Law under Federal guidelines. However, according to Director Hodgman, the Solicitor's office had a decidedly different view and wrote to the plaintiffs saying that, based on what they learned concerning the Massachusetts situation, they questioned whether our practices were in compliance with Federal requirements. The Director indicated he was disturbed when informed of the position taken by the Solicitor's office and so informed the Solicitor. As a result, Mr. Hodgman said the Solicitor's office tempered their position.

Subsequent to a meeting with the U.S. Department of Labor and its Solicitor's office, it was the opinion of the DES counsel and the Massachusetts Attorney General's staff that an amendment to Section 69(c) would be required in order to provide for an appeal procedure on a denial of waiver on an overpayment issue. With this year's Legislative session nearing an end, it was the opinion of the Director that emergency regulations would have to be promulgated, pending the filing of a bill in the 1980 session of the Legislature.

The DES Legal Department, Mr. Hodgman said, advised him to propose regulations under Chapter 30A of the Massachusetts General Laws. Chapter 30A provides for adjudicatory hearings and would allow a hearing at the Director level and the Director's decision could then be appealed to the Massachusetts Superior Court. The Director told the Council the Legal Department was in the process of drafting regulations, containing the aforementioned provisos, and these would be presented to the Council in the form of emergency regulations which would take effect immediately, if approved by the Advisory Council.

Pending the promulgation of regulations and settlement of the Hanlon case, Director Hodgman said he had suspended recoupment of any case where requests for waiver of overpayment had been made. These procedures would protect individual's rights until this issue is finalized.

At this point, the Director replied to a question raised by Chairman Debar relative to the present status of the Hanlon case and informed the Members that the case was pending trial, having gone through a phase of "discovery" and interrogations by the Court. It was Mr. Dunn's opinion that utilizing Chapter 30A was an excellent approach. Mr. Debar asked if a hearing was now required of all States and, in answering, the Director said the U.S. Department of Labor indicated that the case before the Court concerned Massachusetts and the matter of other states was irrelevant at this time. In reply to a question posed by Mr. Govostes, Director Hodgman indicated overpayments could result because of DES error, willful misrepresentation by a claimant, or an inadvertant, honest error by the claimant. The Director cited several examples of errors which had resulted in overpayments for a short period of time. He said about 10% of the overpayments are caused by DES error.

Mr. Irvin asked if an overpayment would be pursued if the claimant had become disabled. In reply, Mr. Hodgman said the procedure now would be to ascertain the facts through a hearing and then issue a determination. These hearings will be conducted by the Determinations and Hearings Department of the DES and such decisions then may be appealed to the Superior Court.

Chairman Debar asked if the plaintiffs would be satisfied with this procedure. The Director answered that it was his opinion the plaintiffs would prefer the system that goes to the Board of Review and then to the District Court. Miss Wheeler questioned what the percentage of overpayments were to the total claimload. Mr. Hodgman said the present overpayment total was approximately seven million dollars and was a small percentage considering almost five billion dollars have been paid out in benefits since the program's inception. The biggest problem occurred, he said, during the "Depression Years" when many benefits had to be based on claimant affidavits because of a lack of accurate wage information.

Chairman Debar questioned whether regulations would satisfy the Solicitor's office and it was the Director's opinion that they would accept rules and regulations as a solution to the problem. The major factor, according to Mr. Hodgman, was the provision for an appeal from the Director's decision on waiver of overpayment. Due process is accomplished, he said, when an individual may appeal to the Courts.

The Director thought he might be able to present a set of emergency regulations to the Council for their consideration and approval by early September; he said emergency regulations become effective upon promulgation, with a public hearing required within thirty days. The reason for emergency regulations is obvious, with a suspension of waiver cases, a backlog is going to occur and the DES would like to act on these by October under the new hearing process.

Chairman Debar asked the Director, if emergency regulations were adopted would this action have any effect on the Court case, Hanlon vs Hodgman? It was Mr. Hodgman's opinion that it would not, but the plaintiffs might possibly agree not to pursue the case if they gained their objectives through the passage of the emergency regulations proposed by Deputy Director James J. Walsh. It was thought that copies of this draft might be available by the end of August for a preliminary review by the Council. Responding to a question from Chairman Debar, the Director repeated his opinion that permanent emergency regulations should be available for Advisory Council consideration in early September.

Mr. Hodgman reviewed the procedures that will be in effect, with the approval of the emergency regulations, and indicated the Determinations and Hearings hearing officers would be trained in the new appeal process. He also detailed the basic procedures involved in developing emergency regulations or permanent regulations, as such.

At this point, Director Hodgman concluded his briefing on the regulations issue and then, in response to a request from Mr. Debar, reported the latest progress on the computerization of the Job Matching system. He indicated that four offices in the Southeastern District have had this system installed, with installation in progress for four offices in the Western District. The timetable, he said, is for the Central District to be next. This will include Worcester and three other Central offices, as yet to be decided. All offices in the Metropolitan area will be tied into the system, with four offices in the Northeastern District being last. He updated the Job Matching Operation for the Members and said he would make the necessary arrangements for a demonstration of the system at a date convenient to the Council. Mr. Hodgman also briefly explained the Employment Service's program of placing Employment Counselors in nine high schools throughout the State to work with their Guidance Counselors. He indicated that the Division hoped to enlarge this cooperative program next year to include approximately thirty high schools.

Starting with the Unemployment Insurance Service, the Director indicated he and his staff were preparing tentative plans that would be invoked, if a 1980 recession should greatly increase the unemployment claim load. Mr. Hodgman said he was not expecting unemployment in Massachusetts to reach the levels of 1974-1975, but the Division feels the potential situation warrants advance preparation. Relative to this possible large increase in unemployment, the Director hopes that the system will be in effect by June of 1980. Problems would certainly develop, he said, if the claimload dramatically increased as the new system was being installed.

In discussing unemployment insurance, Chairman Debar asked the Director if legislation filed to amend Chapter 4, Acts of 1973 had been acted on recently. In responding, Mr. Hodgman indicated the bill (H.3351) was still pending in the House Committee on Ways and Means. It was Mr. Dunn's opinion that the Legislature would enact this bill prior to prerogation, as it is necessary that the Division conform with the Federal government requirements on Unemployment Compensation. The Director agreed and said all opposition to the bill had dissolved months ago.

At this point, Director Hodgman indicated he had concluded his visit and would be available to meet with the Council in the near future pending mutual arrangements on a specific time and date.

Prior to the Director's departure, Mr. Cacciapuoti asked as to when the computerized Job Matching system would be completely installed. It was Mr. Hodgman's estimate that 80% of the employment offices would be on the system, including indoctrination on the value and importance of the system to the employment service interviewer by Spring of 1981. Both Miss Wheeler and Mr. Cacciapuoti expressed the opinion that Job Matching will greatly enhance an applicant's opportunity to obtain a job in line with his or her experience and educational background. With no further discussion forthcoming, the Director left the meeting.

MEETING WITH EXECUTIVE STAFF

Deputy Director James J. Walsh, DES Chief Counsel Charles O. Hicks and DES Counsel Andrew Hessloff attended an Advisory Council meeting on October 4, 1979, for the purpose of submitting to the Council the Director's proposed Regulations pertaining to the Waiver of Overpayments of Unemployment Compensation Benefits. In accordance with Section 25 of Chapter 23, such proposals are subject to approval and certification by the State Advisory Council. Mr. Hicks indicated they were present to brief the Council on the content of the regulations and answer any questions posed by the Members.

Initiating the briefing, Mr. Hicks said the intent of the regulations is to establish standard procedures for the processing of requests for waiver of overpayment, and an appeal system under which claimants may contest the Director's denial of waiver. Presently, under Section 69(c) Chapter 151A, Mr. Hicks stated, the Director is empowered to deny a request of waiver with no provisions for an appeal from the Director's decision. The Director, however, may grant a waiver if he finds recovery would be against equity and good conscience. According to Mr. Hicks, the DES has been implementing Section 69(c) on an informal basis until the plaintiff brought suit in Federal District Court, charging the DES with violating the 14th Amendment of the U.S. Constitution by not providing for due process through judicial relief. He indicated that the plaintiff informed the U.S. Labor Department on this issue of no appeal to the Courts under Section 69(c).

Mr. Hicks said the DES was notified by the U.S. Department of Labor that the Agency may be out of conformity with Federal requirements if no appeal to the Courts was allowed under the Law. He said a meeting was held with the Judge and the Massachusetts Law Reform Institute, representing the plaintiff, at which meeting the Judge indicated the plaintiff would succeed if the case went to trial. Although it was not an official order, the Judge recommended that the DES commence proceedings to promulgate regulations allowing a claimant the right to request a Hearing and a subsequent appeal to the Court on a Director's denial of waiver.

According to Mr. Hicks, it was the intention of the DES to file legislation to comply with Federal standards and the Judge's recommendation. Since both the Judge and the U.S. Department of Labor encouraged the Agency to "move with haste", it was the Director's decision to propose emergency Regulations pending the filing of legislation in the 1930 Session of the General Court.

At this point, Deputy Director Walsh replied to a question posed by Chairman Debar and indicated it was the opinion of the U.S. Department of Labor that a denial of waiver was, in fact, a denial of benefits and under the Social Security Act, this Director's decision was an appealable issue. Mr. Walsh agreed with Mr. Debar's observation that this situation raises the possibility of a conformity issue.

Mr. Hicks indicated that he and a Member of the Attorney General's staff, Mr. Thomas Miller, went to Washington and discussed this problem with the U.S. Department of Labor's legal staff. It was Mr. Hick's opinion that, although it was not specifically expressed, the Federal attorney's felt the DES was out of conformity under the present guidelines in operation under Section 69(c). Relative to Mr. Hick's statement, Deputy Director Walsh said the Agency had received a letter from the Federal government in the Spring and it was his opinion the content of the letter stated bluntly that the DES was out of conformity.

Mr. Debar inquired whether it was necessary under Federal standards to have a waiver provision in Massachusetts Law. In reply, Mr. Hicks indicated it was not a Federal requirement, with only nine states having such a provision, but if a state does provide for a waiver of overpayment, the state must comply with standards set by the Federal government.

In reply to a question by Chairman Debar, Mr. Andrew Kessloff, DES Counsel, said the plaintiff agrees with the Agency on the major points outlined in the proposed regulations, but has suggested several minor changes. He cited one example in which the plaintiff felt every claimant should be automatically considered for a waiver without having to request one; a position on which the DES disagrees. Another area of disagreement, Mr. Kessloff said, concerns the plaintiff's request to have presumptive examples for the granting of a waiver, including the regulations. It is the intent of the DES to allow Hearings Examiners some discretion in making their determinations.

After a short discussion on the merits of income tables being incorporated in the regulations, Mr. Govostes asked a question on a claimant's right under the present procedures. In reply, Deputy Director Walsh said a claimant, under the present law, may dispute the fact of overpayment itself, to the Board of Review and, if he should lose the appeal, still request a waiver of overpayment. The problem here, Mr. Walsh said, is that even a claimant found to be flagrantly at fault can still forestall recovery of payment by appealing. He indicated several people have suggested that the present law (Chapter 151A) be amended by legislation to remove the waiver provision, altogether. Chairman Debar asked if this was permissible under Federal standards and both Mr. Hicks and Mr. Kessloff replied in the affirmative. Mr. Debar then asked if the plaintiff agreed with the regulations, as proposed. In answering, Mr. Walsh

said agreement has been reached on the major issues, but further negotiating will be necessary on some minor differences in language. Mr. Walsh assured the Chairman that these proposed regulations would not violate conformity with Federal standards as did the so-called "storm" legislation (Chapter 4, Acts of 1973) although compliance will propose many more administrative problems to which the Division will have to adjust. At this point, Mr. Walsh briefly described the administrative procedures to be followed by the DES Hearing Examiners in complying with the proposed regulations. He estimated the workload might increase from 25 to 50% for the Examiners. Mr. Hicks said arrangements have already been made to add extra Examiners to meet the anticipated increase in workload. It was Mr. Walsh's opinion the regulations gave the DES a solid structure under which to operate, with a minimum of anticipated difficulties.

In conclusion, Mr. Kessloff, DES Counsel, outlined the procedures involved in the promulgation of the Regulations, citing dates and time allotments required for a Public Hearing and the subsequent filing of the Regulations with the Secretary of State. If problems should arise, according to Mr. Kessloff, the Regulations could be amended prior to the filing of legislation in the next session (1980) of the General Court. Any amendments to the regulations would also be subject to the approval of the Advisory Council.

Chief Counsel Charles O. Hicks and Counsel Andrew Kessloff attended a subsequent Council meeting on October 10, 1979, for the purpose of submitting for Advisory Council approval a final draft, with amendments, of the aforementioned Regulations on the Waiver of Overpayments of Unemployment Compensation Benefits.

As the Council Members had devoted a major portion of two prior meetings to a review and evaluation of the content of the previous draft, Chairman Debar suggested that Mr. Hicks focus his remarks on the proposed amendments.

Before proceeding with discussion on the amendments, Mr. Hicks reviewed the circumstances which necessitated the promulgation of Waiver Regulations. He said the regulations proposed by the Director were initiated as a result of a claimant's suit filed in Federal District Court. It was the plaintiff's claim that "due process" was negated because an appeal was not allowed from a Director's denial of a waiver on overpayment of benefits. Counsel Kessloff said the DES legal department was advised by the Judge that provisions must be made for an appeal of the Director's decision to the Courts. Chief Counsel Hicks also stated the U.S. Department of Labor informed the DES it would be out of conformity with Federal standards, unless a provision for an appeal to the Courts was adopted within the Employment Security Law (Chapter 151A). Mr. Hicks indicated Waiver Regulations are to be promulgated pending the filing of legislation in the 1980 session of the General Court. A public hearing, he added, would be held within 90 days after Regulations were promulgated.

Mr. Dunn expressed the opinion that this provision for an appeal to the Court would greatly increase the workload of the DES and incur an additional expense in the budget of the Agency. Mr. Hicks agreed with Mr. Dunn's observation, but said it was necessary because of the Judge's opinion the DES would lose

the case if the plaintiff's suit was pursued in the Federal Court. Massachusetts was one of nine states which had a waive provision in its law and, unless procedures were promulgated allowing for an appeal to the Court, it would be out of conformity with Federal standards. At this point, Chairman Debar requested that Chief Counsel Hicks proceed with a review of each of the seven changes, item by item.

Change number one, Mr. Hicks said, amended Section 6.01(1) by deleting the last sentence referring to the regulations as of a temporary nature. He explained that the Regulations are to be promulgated as permanent to comply with Federal standards, until legislation is enacted in the 1980 session of the General Court.

The second change amended subsection (b) of Section 6.03(1) and DES Counsel Andrew Kessloff briefed the Members on the intent of the proposed change. He stated this change in subsection (b) allows the DES to provide for an appeal process under the other programs administered by the DES, in addition to the regular unemployment compensation benefit programs. If problems should arise in the future, in this area, the regulations could be amended by filing the changes with the Secretary of State.

Proceeding to the third change, Section 6.03(6)(a) was amended by adding the phrase "work-related transportation expenses". This addition was suggested by the plaintiff, according to Mr. Kessloff, and, although the DES would have considered any such expense as a factor in making a Waive decision, it was agreed to insert the phrase in the regulations.

The fourth change inserted additional language in Section 6.07(1) to protect the appeal rights of a new claimant. This amendment, Mr. Kessloff indicated requires the Division to issue a written notification whenever a new claim is filed by a claimant from whom the Division intends to recover an outstanding overpayment by offset. This allows a claimant to request a waiver of overpayment which occurred on a previous claim. In reply to Mr. Debar's question on the Division's position relative to this change, Mr. Kessloff indicated the DES was agreeable to the amendment, but would have properly notified the claimant of his rights of waiver anyhow.

The fifth change reviewed by the Council amended Section 6.07(1)(e). Mr. Kessloff explained that the additional language requires that whenever a claimant voluntarily elects to relinquish his/her right to appeal a waiver, such election must be in writing before it becomes effective. Mr. Debar felt that this change to comply with all the implications inherent in the amended language would impose a serious burden on the administrative staff. Mr. Kessloff was in agreement, but said the Administration is convinced this provision would probably be required by the Court. To further clarify the intent of the amendment, Mr. Kessloff cited several examples that might occur due to the change in wording.

A short discussion ensued relative to Mr. Dunn's observations that unemployment compensation is intended as a short term insurance provision for an

individual out of work through no fault of his own, but the program however, is developing into more of a Welfare concept each year. He further felt that the dependency allowance provision in the Law was also a Welfare concept. Mr. Kessloff was in general agreement with Mr. Dunn's comments, but remarked that the provision in the Employment Security Law was a legislative prerogative and not within the purview of the Administration. Mr. Dunn stated he was aware of the demarkation of authority, but this did not alter the situation affecting the Unemployment Compensation program.

With no further discussion forthcoming, the sixth change involving Section 8.08(1) was taken under consideration by the Council Members. In review, Mr. Kessloff said the phrase "within a reasonable time" was deleted as being redundant, since the sentence also specified "promptly".

The phrase "conform to 801 CMR 1.02 (6)" was added to signify reference to the Code of Massachusetts Regulations which provides uniform rules for all Adjudicatory Hearings conducted by Massachusetts agencies.

The final change involved Section 6.15, which was deleted by the DES legal and Executive staff. Mr. Kessloff said the DES felt it would be unwise to tie down the Agency to such an indefinite time period, pending the subsequent setting of statutory limitations. Mr. Debar questioned whether the plaintiff was aware of this deletion of Section 6.15. In reply, Mr. Kessloff said this action was initiated by the DES and that he did not know what the reaction of the plaintiff might be. He indicated the plaintiff has been aware of the major changes through receipt of draft copies of the regulations with many of the plaintiff's comments being received by mail. It was Mr. Kessloff's opinion that it was of prime importance the changes be acceptable to the Judge and the U.S. Department of Labor rather than to the plaintiff. If any valid comments were initiated by the plaintiff, or any other segment of the public, they could be presented at the Public Hearing to be held ninety days after the promulgation of the Regulations.

Chief Counsel Hicks and Counsel Kessloff concluded their briefing with a review of the procedures involved in filing the Waiver Regulations with the Secretary of State.

After a further review of the aforementioned changes, Chairman Debar, noting a quorum of four Members present, called for a vote of the Council in accordance with Section 95, Chapter 23 of the General Laws. Mr. William Irvin moved to approve the Waiver of Overpayment Regulations, as amended, seconded by Mr. Joseph Dunn. In the resulting vote, the Council was unanimously recorded in favor of the motion to approve the Regulations, with Mr. Debar and Mr. Irvin, Mr. Govostes and Mr. Dunn voting in the affirmative.

The Council's certification of approval was duly recorded and forwarded to Director John F. Hodgman, as follows: - -

The State Advisory Council, at its meetings on Thursday, October 4, 1972 and Wednesday, October 10, 1972 reviewed your Regulations proposed for the

purpose of establishing procedures and the interpreting of standards for waiver of recovery of overpayment benefits, and the establishing of procedures for appealing the correctness of the application of an overpayment in accordance with General Laws Chapter 151A, Section 69 (430 CMR 6.00).

Subsequent to the second review of these Regulations at the Advisory Council meeting on October 10, 1979, at which a quorum of four Members were present, the Members of the State Advisory Council, pursuant to Section 9J, Chapter 23 of the General Laws, did note and record its unanimous approval of the aforementioned Regulations of the Division of Employment Security.

Mr. Robert Mahoney, DES Counsel, attended the Advisory Council meeting on February 19, 1980, to submit the Director's proposed amendment to the Waiver of Overpayment Regulations which were previously approved by the Council on October 4, 1979 and promulgated October 12, 1979. The proposed amendment was being submitted to the Advisory Council in accordance with Massachusetts General Laws, Chapter 23, Section 9J, and read as follows - 430 CMR is hereby amended by adding the following Section:

6.15 ACTIONS IN FURTHERANCE OF CRIMINAL PROSECUTIONS

Nothing contained herein shall be construed so as to limit or otherwise constrain any actions taken by the Department of the Attorney General in furtherance of criminal prosecutions.

Prior to briefing the Members on the purpose of the amendment, Mr. Mahoney outlined the background necessitating the promulgation of the Waiver regulations; a procedure of which the Council was cognizant due to its previous review and consideration of said Regulations.

The proposed amendment, Mr. Mahoney said, was a result of the Public Hearing attended by the Massachusetts Law Reform Institute and Staff members from the Massachusetts Attorney General's office. It was the opinion of the Attorney General's office the Waiver Regulations, as promulgated, would hamper their efforts to criminally prosecute an individual who had obtained unemployment compensation benefits by fraudulent means. The Attorney General's office indicated it had several such cases on file in various District Courts and that a claimant's request for Waiver of overpayment could effect their timely prosecution of these cases. Through judicial appeal, the Attorney General's office felt some of these case could go as far as the Massachusetts Supreme Judicial Court, with the probability in some instances, that the six year statute of limitations would have expired before they could initiate criminal charges.

Because of the aforementioned circumstances, Mr. Mahoney indicated the Attorney General's office forwarded a letter to the Director and DES Legal Department requesting exemption from the Waiver of Overpayment Regulations. Because Section 67(c) of Chapter 151A concerned Civil action, the DES Legal Department felt it would not legally affect any criminal prosecution by the Attorney General's office, but the Attorney General's office strongly felt otherwise.

Basically, Mr. Mahoney said, this is the reason the amendment has been proposed and is being submitted for Advisory Council consideration.

At this point, Chairman Debar questioned as to why this situation did not arise when the Regulations were originally proposed. In replying, DES Counsel Mahoney said the content of the Regulations were considered legally satisfactory to the Members of the Attorney General's Staff assigned to the DES and were unaware of any problems the Regulations might present to the criminal section of the Attorney General's office.

In the lengthy discussion that followed relative to the proposed amendment, Mr. Dunn expressed the opinion that legislation should be proposed to correct this situation, instead of an amendment to the Waive Regulations. In fact, Mr. Dunn said, a bill filed to repeal Section 69(c) would eliminate all necessity for Waiver Regulations and the need for any further amendments. Chairman Debar questioned Mr. Mahoney as to whether a timetable had to be met in the promulgation of the amendment, as was the case with the original Waiver of Overpayment Regulations. Mr. Mahoney replied in the negative, but indicated Director Eugene J. Doody was anxious to satisfy the Attorney General's request that the amendment was necessary for the legal prosecution of certain cases involving the intent of criminal fraud. Mr. Mahoney also agreed with Mr. Debar's observation that the amendment was of specific concern to the Attorney General's office and not as a result of a DES administrative problem.

Mr. Mahoney concluded his briefing by stating that the proposed amendment would, in the opinion of the Attorney General's office, permit them to continue with the prosecution of claimants that had obtained unemployment compensation benefits in a fraudulent manner.

Mr. Charles A. McCarthy, Director of Unemployment Insurance Services, attended the March 11, 1980 meeting to discuss the current status of the Unemployment Compensation Trust Fund and the fiscal 1980-81 economic outlook with its potential effect on the Massachusetts unemployment rate and solvency of the Unemployment Compensation Fund.

Mr. McCarthy reported that the unemployment claim load was at a low level and was, historically, at one of the lowest points ever for this time of the year; with Massachusetts unemployment for February at 4.8% compared to a national rate of 6%. Benefit payments, he said, were approximately 2.5 million dollars less than this period last year with the State's economy, presently, stronger than that of the nation's as a whole. Considering present economic indicators, Mr. McCarthy felt this 1980-81 outlook for the State was good.

Mr. Rooney questioned the status of non-profit and governmental organizations relative to overdue payments to the Fund and cited an example of his experience with the City of Boston and its problem in meeting its payments to the Massachusetts Unemployment Compensation Fund.

In replying, Mr. McCarthy indicated there were a number of such organizations overdue in reimbursing the Division for the payment of benefits to their employees, but he had no figures on the amount of monies due. He did indicate that these employers are charged the 8% interest on all overdue payments.

All Members noted that non-profit and governmental employers, under the reimburseable plan, pay no share of the DES costs in administering the Unemployment Insurance Program and are not subject to the Federal Unemployment Tax Act (FUTA). They felt this was an unfair burden on those employers under the Contributory System. This subject, they indicated, would be further explored and researched by the Council in the coming months.

Mr. McCarthy agreed with the Members' observations on this issue, but indicated until Federal or State laws are amended he could see no relief for the contributory employers' subsidizing such administrative costs. Mr. Rooney said he had discussed this situation in the past with former Director John D. Crosier and it was Mr. Crosier's estimate then that administrative costs for non-profit employers were about two million dollars per year. With municipalities now covered under unemployment compensation, Mr. Rooney felt this figure could easily have doubled.

Mr. McCarthy said it was his opinion that no study has been attempted to determine such costs and was unaware of the source of Mr. Crosier's figures.

Chairman Debar indicated to Mr. McCarthy that the Council was considering Senate Bill No. 66, which would extend the employers' reporting period to ten days instead of the present seven day limit and asked his opinion of the bill's intent. In replying, Mr. McCarthy said he had no quarrel with the extension, but the ten day period would cause timely payment problems in a request reporting state such as Massachusetts. He indicated that Federal requirements stipulate that 87% of all first payments must be made within fourteen days. The Division presently, he said, is meeting that time limit. It would also be contrary to a recent US District Court case against the Division which concerned the timeliness of such first payments. Through a consent judgment, the Division must meet the fourteen day period. At the request of the Members, Mr. McCarthy briefed the Council on the background of this case, referring to it as the Peter's Case.

Relative to Senate Bill No. 66, Mr. Dunn noted that a similar bill has been filed with the General Court the past three years and has been killed by legislative action every year. Both Mr. Dunn and Mr. Rooney expressed the opinion that Massachusetts Employers are opposed to Massachusetts becoming a quarterly wage reporting state. Answering a query posed by Chairman Debar and Mr. Rooney, Mr. McCarthy stated the majority of states have quarterly wage reporting, with about nine states requiring request reporting of wages. He also stated, in reply to Mr. Debar and Mr. Rooney, that he was unaware of whether any of these nine states have a ten day reporting period. The Members agreed that mail delivery recently has been poor and could be a major reason

for employers not returning wage requests within the required seven day period. Relative to this situation, Mr. McCarthy cited an example of the difficulty in contacting employers in the Cape Cod area for wage information on their summer employees.

With no further discussion forthcoming, Chairman Debar thanked Mr. McCarthy for his information and Mr. McCarthy left the meeting.

Deputy Director James J. Walsh attended the Council meeting on April 22, 1980 to acquaint the Members with House Bill No.82, "An Act Relative To The Waiver Of The Recovery Of Overpayment Provisions Of The Employment Security Law," and to answer any questions posed by the Members on its content and the related issue of the possibility of deleting Section 69(c) of Chapter 151A from the Law.

Chairman Debar initiated the discussion by asking Council Member Dunn to express his opinions on House Bill No.82 and his position to the possible deletion of Section 69(c) of Chapter 151A.

Mr. Dunn indicated he was opposed to the Waiver provisions as contained in H.82 and fully supported proposed legislation to delete Section 69(c). Federal requirements, he said, does not require a waiver provision and most states do not contain one in their law. It was Mr. Dunn's contention that this waiver provision is becoming increasingly difficult and expensive for the DES to administer and is greatly increasing the cost to employers who bear the cost of such benefits. Miss Wheeler said she agreed with Mr. Dunn's observations and felt it was an unfair imposition on the contributory employers.

Mr. Rooney related the experiences of some of his clients, who were non-profit and governmental organizations, and cited examples affecting them in this waiver provision, which he felt was of a discriminatory and highly expensive nature. As reimburseable employers, Mr. Rooney explained, they were charged for overpayment of benefits subsequently voided, with no removal of charges from these employers' accounts. Furthermore, he added such employers had no right to appeal these decisions under the present method of reviewing the waiver of overpayments.

Mr. Debar was in general agreement with the positions taken by Mr. Dunn and Mr. Rooney and expressed the opinion that deletion of Section 69(c) would seem to be a logical solution to the problem confronting the DES and asked Mr. Walsh if he would comment on the observations and opinions expressed by the Council Members.

In replying, Mr. Walsh indicated the rescinding of Section 69(c) would certainly solve the problem for the Agency and eliminate a complicated and expensive administrative situation for the DES. He then gave a brief outline of the background resulting in the Director's filing of House Bill No. 82. Under the present provision of the Law, Mr. Walsh explained, a

claimant's appeal on a Director's decision on waiver of overpayment would go directly to the Courts, as there is no provision in the Employment Security law for such an appeal to be heard by the Board of Review. This was the reason, he said, that the Director decided to file House Bill No. 82.

Later, Mr. Walsh indicated, the Director agreed that the filing of legislation to delete Section 69(c) should have been the action taken by the DES to solve this time-consuming and costly problem facing both the Agency and subject employers. As the Director had already submitted his bill (H.82), it was felt any legislation to delete Section 69(c) would have to be initiated through the office of the Secretary of Economic Affairs. Accordingly, appropriate language was drafted to affect this change and submitted to Secretary George S. Mariotis, for his filing of the bill with the General Court. Mr. Walsh noted that the Council Members were cognizant of the fact the Secretary's office did not file such a bill and he indicated that he and the Director still have not been given a suitable explanation as to why the Secretary's office failed to file the requested legislation.

The Council Members indicated to Mr. Walsh that they were not in favor of the provisions in House No. 82 and would prefer submitting a proposal to delete Section 69(c). Mr. Dunn noted it had been the practice of the Council, in previous years, to file legislation it had deemed appropriate and this course of action could be pursued now, if the Members were so inclined.

As the Members were in unanimous agreement with the suggestion made by Mr. Dunn, Deputy Director Walsh said he would prepare a draft proposal containing the necessary language to delete Section 69(c) and submit it for the Council's consideration.

With no further comments forthcoming, Chairman Debar expressed the thanks of the Council and Mr. Walsh left the meeting.

Mr. Charles A. McCarthy, Director of Unemployment Insurance Service, attended the Council meeting on May 27 for the purpose of briefing the Council Members on the new Job Insurance System.

Mr. McCarthy initiated his briefing by reviewing the various benefit payment systems utilized by the DES, since the inception of the Unemployment Compensation program. He then outlined the new Benefit Payment System to be implemented; describing the procedures to be followed and the relationship between the Central office and local offices in the use of the computerized system in the payment of benefits. Mr. McCarthy indicated the greatest improvement through this new system will be the ability of the local office to make its own monetary determinations and control all necessary claimant data at the local office level, instead of the previous time consuming procedure of forwarding all such information to the Central office for its calculations and computerization. He also indicated a local office could, through the use of a mini-computer, maintain a continuity of service to a

claimant, even if there should be a temporary loss of contact, or breakdown, in the main computer located in the Central Office. Data stored in the mini-computer, he said, could be fed into the main computer when it returned to normal operations.

The new system, he said, will also provide an instant printout of a claimant's history that can be viewed on a screen in each local office. This method will eventually eliminate the need for individual Claim Record Cards to be maintained in a local office, resulting in the saving of time and space and a vast improvement in the efficiency of the payment of benefits.

In response to a question by Mr. Debar, Mr. McCarthy said the new System will not be ready for testing purposes until November 1980. At that time, it will be tested on a prototype installed in the Interstate Department of the Administrative Office. The first operational testing will be done in the Northampton Local Office, sometime in early 1981.

Relative to the aforementioned schedule, Mr. McCarthy agreed to have Mr. Joseph Shea, Supervisor of the Task Force for the new system, present a detailed outline of the procedures and methods utilized in the new system, prior to its operational installation in the Interstate Department in November. The Council also indicated it may visit the Northampton local office, which has been selected as the pilot office, to observe the actual operations of the system.

With no further comments forthcoming on the new system, Chairman Debar questioned Mr. McCarthy on the status of the Unemployment Compensation Fund. In reply, Mr. McCarthy said the Unemployment Compensation Fund was in "excellent shape" and that the remaining balance of the Federal loan (\$232M) would undoubtedly be paid before the due date of November 1, 1980. He indicated that Deputy Director James J. Walsh had made such a recommendation to the Director and it was Mr. McCarthy's opinion that the Director will accept Mr. Walsh's recommendation.

In answering a question posed by the Members, Mr. McCarthy said approximately 39,000 "snow claims" (as a result of Chapter 4, Acts of 1978) would now be charged to the Solvency Account as a result of clarifying legislation passed by the General Court under Chapter 50, Acts of 1980.

Mr. McCarthy concluded his briefing after a short discussion on the Administrative problems resulting from the FUTA exemption granted by the Federal Government to non-profit and governmental organizations under the reimburseable method of payment.

At this point, Chairman Debar thanked Mr. McCarthy for his briefing and comments and he departed the meeting.

RULES AND REGULATIONS

After devoting portions of several meetings to review and discussion on the Director's proposed amendment to the Waiver of Overpayment Regulations, the Advisory Council recorded its position on the aforementioned proposal at its meeting on March 7, 1980.

The Advisory Council officially notified Director Eugene J. Doody of its certification of his proposed amendment, by letter, on March 10, 1980, which was worded as follows:

The State Advisory Council at its meeting on March 7, 1980 reviewed your proposed amendment to the Waiver of Overpayment Regulations, pursuant to 430 CMR, Section 6.15.

Subsequent to its review, the Advisory Council, in accordance with Section 9J, Chapter 23 of the General Laws, with a quorum of four Members present and voting, did unanimously record its approval of the aforesaid amendment to 430 CMR, Section 6.15, Action in Furtherance of Criminal Prosecutions.

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ANNUAL REPORT
of the
STATE ADVISORY COUNCIL
DIVISION OF EMPLOYMENT SECURITY

STATE OF MASSACHUSETTS

MEMBERSHIP OF THE
STATE ADVISORY COUNCIL DIVISION OF EMPLOYMENT SECURITY
JUNE 30, 1983

Public Representatives

Donald G. Cacciapuoti, Chairman

Frank R. Debar

Employer Representatives

Joseph A. Dunn

John D. Rooney

Employee Representatives

John H. Markiewicz

Eleanor F. Wheeler

19 Staniford Street
Boston, MA 02114

ORGANIZATION

In 1982 - 1983 the Advisory Council met weekly.

The Advisory Council expresses its gratitudes to the Executive Service for contributing to the Council meetings and to the Council requests.

DES MAIN PURPOSE

- . To administer unemployment insurance programs
- . To operate an employment service
- . To collect, analyze, and provide labor market information

These functions are closely interrelated and designed to reduce unemployment and its negative effects on both individuals and the economy.

Activities Relating to the 1982 - 1983 Program

LEGISLATION

Various changes in Job Insurance program procedures were implemented as a result of legislative and operational developments which occurred during the year.

The Omnibus Reconciliation Act of 1980 contained amendments to the Federal-State Extended Unemployment Compensation Act of 1970.

Accordingly, Section 30A of Chapter 151A was amended. These amendments were effective March 31, 1981 but because Extended Benefits did not trigger on until March 28, 1982, they were not implemented until that time. These amendments imposed much more stringent requirements for eligibility for extended benefits. Two

of the most significant requirements were that an individual must make a more diligent effort to obtain work and must apply for and accept any suitable work that is within the claimant's capabilities. Failure to do so results in a disqualification until such time as the individual has new employment during at least four weeks and has earned four times the weekly benefit amount. Statistics for this extended benefit period show that 49 percent of the determinations made on issues of "able, available and actively seeking work" resulted in disqualifications, while 70 percent of the determinations made on the issues of refusal of suitable work resulted in disqualifications. As of December 9, 1981, Chapter 151A of the Massachusetts Employment Security Law was amended to allow the attachment or assignment of an individual's unemployment compensation benefits for child support obligations. As a result, procedures were implemented in DES field offices to deduct from an individual's unemployment compensation benefits a court-ordered payment or voluntary wage assignment agreement from the Welfare Department for child support.

The Council was regularly informed about state and federal legislation and was actively involved in the legislative initiatives:

Recommendations for the 1983 Legislature

In November, 1982 the Director filed five bills for the 1983 legislative session. The Council took an in-depth review and evaluation of these proposals prior to submitting its recommendations to the

appropriate Committee of the Legislature. The subject matter of these proposals are as follows:

1. An Act To Aid The Collection Of Certain Payments Due The Division of The Employment Security Law.
2. An Act Relative To The Waiver Of The Recovery Of Overpayment Provisions Of The Employment Security Law.
3. An Act Relative To The Employment Security Law.
4. An Act Relative To The Administration Of The Division Of Employment Security.
5. An Act Establishing A Set-Off Program.

In conformance with its responsibilities as designated by Section 62 of Chapter 151A, General Laws, the Advisory Council reviewed and evaluated the proposals for amendments to the Employment Security Law pending before the 1983 session of the Great and General Court. As is further required, the Council submitted its recommendations to the appropriate Legislative Committee and recorded its positions on these bills:

Unemployment Compensation - 1983 Bills

<u>HOUSE BILLS</u>		<u>A.C. STATUS</u>	<u>LEG. STATUS</u>
H. 99	AN ACT TO AID IN THE COLLECTION OF CERTAIN PAYMENTS DUE THE DIVISION OF EMPLOYMENT SECURITY	OTP	FURTHER STUDY
H. 100	AN ACT RELATIVE TO THE WAIVER OF THE RECOVERY OF OVERPAYMENT PROVISIONS OF THE EMPLOYMENT SECURITY LAW	OTP	FURTHER STUDY
H. 101	AN ACT RELATIVE TO THE EMPLOYMENT SECURITY LAW	OTP	NEW DRAFT

<u>HOUSE BILLS</u>	<u>A.C. STATUS</u>	<u>LEG. STATUS</u>
H. 103 AN ACT ESTABLISHING A SET-OFF PROGRAM	OTP	
H. 194 AN ACT RELATIVE TO A CHILD SUPPORT INTERCEPT OF UNEMPLOYMENT BENEFITS IN CONFORMITY WITH FEDERAL REQUIREMENTS	ONP	
H. 647 AN ACT RELATIVE TO EDUCATIONAL COLLABORATIVES	ONP	FURTHER STUDY
H. 703 AN ACT RELATIVE TO UNEMPLOYMENT COMPENSATION FOR CAFETERIA, CLERICAL AND SECRETARIAL EMPLOYEES	ONP	FURTHER STUDY
H. 877 RESOLVE PROVIDING FOR AN INVESTIGATION AND STUDY BY A SPECIAL COMMISSION RELATIVE TO THE FINANCING PROVISIONS OF THE UNEMPLOYMENT COMPENSATION PROGRAM	OTP	
H.1100 AN ACT FURTHER DEFINING MENTAL ILLNESS	ONP	
H.2125 AN ACT RELATIVE TO EMPLOYMENT EXCLUSIONS UNDER THE EMPLOYMENT SECURITY AND WORKMEN'S COMPENSATION LAWS		
H.2265 AN ACT RELATIVE TO EMPLOYER CONTRIBUTIONS UNDER THE EMPLOYMENT SECURITY LAW		
H.2271 AN ACT EXEMPTING SUMMER CAMP EMPLOYMENT	ONP	NEW DRAFT
H.2861 AN ACT RELATIVE TO BENEFITS PAYABLE UNDER THE EMPLOYMENT SECURITY LAW	ONP	FURTHER STUDY
H.3050 AN ACT EXEMPTING CERTAIN PERSONS FROM THE WAITING PERIOD FOR UNEMPLOYMENT BENEFITS	ONP	FURTHER STUDY
H.3206 AN ACT RELATIVE TO EMPLOYMENT EXCLUSIONS UNDER THE EMPLOYMENT SECURITY AND WORKMEN'S COMPENSATION LAWS		NEW DRAFT
H.3210 AN ACT TO FURTHER DEFINE SERVICE NOT INCLUDED IN "EMPLOYMENT" FOR PURPOSES OF EMPLOYMENT SECURITY	OTP	FURTHER STUDY
H.3202 AN ACT TO AUTHORIZE THE COMMITTEE ON COMMERCE AND LABOR TO SIT DURING THE RECESS OF THE GENERAL COURT FOR THE PURPOSE OF MAKING AN INVESTIGATION AND STUDY OF THE UNEMPLOYMENT COMPENSATION LAWS OF THE COMMONWEALTH		OTP

<u>HOUSE BILLS</u>	<u>A.G. STATUS</u>	<u>LEG. STATUS</u>
H.3227 AN ACT RELATIVE TO THE EXEMPTION FROM UNEMPLOYMENT BENEFITS FOR INDIVIDUALS EMPLOYED IN PUBLIC SCHOOL SYSTEMS	ONP	ONP
H.3425 AN ACT EXEMPTING CERTAIN EMPLOYMENT AFFILIATED WITH HIGHER EDUCATION FROM THE PROVISIONS OF THE EMPLOYMENT SECURITY LAW	ONP	NEW DRAFT
H.4158 AN ACT FURTHER DEFINING WAGES FOR THE PURPOSE OF EMPLOYMENT SECURITY	ONP	FURTHER STUDY
H.4334 AN ACT RELATIVE TO EMPLOYMENT SECURITY OF EMPLOYEES OF THE COMMONWEALTH AND OTHERS	ONP	FURTHER STUDY
H.4338 AN ACT RELATING TO EMPLOYMENT SECURITY REIMBURSEMENT STATUTE	ONP	FURTHER STUDY
H.5080 AN ACT PROHIBITING CERTAIN EMPLOYEES FROM HAVING THEIR EMPLOYMENT TERMINATED AS A RESULT OF TESTIFYING AT CERTAIN DIVISION OF EMPLOYMENT SECURITY HEARINGS	ONP	FAVORABLE
H.5644 AN ACT RELATIVE TO TAXATION AND TRAINING FOR THE UNEMPLOYED	ONP	NEW DRAFT
S. 73 AN ACT EXTENDING UNEMPLOYMENT COMPENSATION BENEFITS TO WORKERS INVOLVED IN A STRIKE	ONP	FURTHER STUDY
S. 79 AN ACT RELATIVE TO THE EMPLOYMENT SECURITY LAW	ONP	FURTHER STUDY
S. 107 AN ACT TO PROVIDE A MORE EQUITABLE DISQUALIFICATION UNDER THE EMPLOYMENT SECURITY LAW	ONP	FURTHER STUDY
S. 125 AN ACT TO MODIFY THE DEFINITION OF NEWSPAPER CARRIER	ONP	FURTHER STUDY
S. 141 AN ACT MAKING CERTAIN CHANGES RELATIVE TO EMPLOYMENT SECURITY	OTP	FURTHER STUDY
S. 436 AN ACT TO AMEND THE UNEMPLOYMENT COMPENSATION LAW		
S.1857 AN ACT PROVIDING FOR EMERGENCY STATE SUPPLEMENTARY UNEMPLOYMENT BENEFITS	ONP	FURTHER STUDY

RULES AND REGULATIONS

The Advisory Council reviewed and discussed the proposed amendments, alterations, and repeals of certain Division of Employment Security 430 CMR Regulations, CMR 4.00: Benefit Series, Section 4.10

Solicitation by Non-Commercial Legal Training Programs.

The Council officially notified Director Kristin S. Demong of its approval of her proposed amendments, by letter March 9, 1983, which was worded as follows:

Pursuant to General Laws, Chapter 29, Section 9J the proposed amendment to Division of Employment Security Regulations, are hereby approved by the Members of the Advisory Council.

TRUST FUND

The Advisory Council, thoroughly aware of its mandate, sustained its continued endeavors towards fiscal fulfillment of its objectives, as they concerned the actuarial status of the Unemployment Compensation Fund.

The balance of the Unemployment Insurance Trust Fund at the end of each quarter in FY'83:

September 30, 1982	\$450,243,729
December 31, 1982	414,210,551
March 31, 1983	311,242,914
June 30, 1983	438,113,673

The Trust Fund balance as of June 30, 1982 was \$434,782,250. The 1983 balance shows a substantial increase of \$3,330,423.

TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982 P.L.97-248

P.L. 97-248 was enacted on September 2, 1982 became effective September 12, 1982, and was to terminate the week ending April 2, 1983. This Federal Act's-Subtitle 6 - Unemployment Compensation - has serious effects on both federal and state Unemployment Insurance programs. Among its provisions were:

- Establishment of a Federal Supplemental Compensation Program from September 12, 1982 to April 2, 1983.
- Increase in the Federal Wage FUTA (\$6000-\$7000) and in the new FUTA Tax from .7 percent to .8 percent, effective January 1, 1983.
- Changes in tax rates - federal and state - effective 1985.
- Extension for the use of Reed Act funds.
- Changes regarding treatment of certain employees of institutions of higher education.
- Encouragement of Work Sharing Plans in the states.

JOB SEARCH WORKSHOPS

During fiscal year 1982, the Division of Employment Security introduced job search workshops to help applicants develop job search skills. In an effort to direct services to those job seekers needing more direct assistance, self-service activities were expanded in local Job Matching Centers for those applicants who could conduct a more independent job search. The use of the

Job Information Service was expanded in local offices. This service provides applicants with a resource library of job information as well as exposure to current job listings. Use of the Job Information Service by job-ready clients resulted in a four percent increase in the number of job referrals directly from the Job Information Service Sections. Approximately 5200 individuals attended 124 workshops during the past fiscal year. Approximately 2000 people entered jobs as a result of workshop attendance.

JOB TRAINING PARTNERSHIP ACT (JTPA) P.L. 97-300

The Council received comprehensive reports on the legislation to replace the expiring CETA legislation. It was particularly interested in the amendments to the Wagner-Peyser Act impacting on the functions of the Job Service, and the functions of the State Job Training Coordinating Council.

JOB FAIRS

During fiscal year 1982, local Job Matching offices participated in a total of 11 Job Fairs in various cities and towns in the Commonwealth. Approximately 10,000 Massachusetts job seekers attended these events.

The Job Matching Service screened 3100 applicants for participating employers.

The Job Fair strategy was utilized as a means of gaining greater visibility and expanded use of DES services by area employers and the public. Job Fairs have proven to be an effective method of

attracting new applicants to local Job Matching offices.

INDIVIDUAL EMPLOYMENT SEARCH (IES)

DES developed a structured individual Employment Search activity for WIN/WTP registrants who cannot compete in a group environment. This activity was modeled after Job Club. The participants are taught job-seeking skills and meet on an individual basis with the DES leader to develop job-seeking plans and receive job development and referral services.

During the fiscal year, the WIN Administrative Unit trained a total of 86 field staff in IES procedures and fully integrated this activity into the WIN/WTP delivery model. By June 30, IES was fully operational in all remaining 16 locations. Almost 46 percent of all WIN/WTP registrants who entered IES found employment.

TARGETED JOB TAX CREDIT (TJTC)

Under the Revenue Act of 1978, Congress approved a Targeted Jobs Tax Credit program. The purpose of this program is to provide an advantage in the labor market for those persons having great difficulty in finding employment. Massachusetts employers will be able to claim up to \$23,000,000 in direct federal tax credits over a two year period because of Targeted Job Tax Credit activities. DES issued 5122 certifications during Fiscal 1982 for new employees hired by the State's employers.

It is designed to increase private sector employment opportunities by offering businesses direct tax incentives to make more jobs available to the disadvantaged.

1982 Amendments to the TJTC legislation extended the program through December 31, 1984 and added a new targeted group-Economically Disadvantaged Summer Youth employees who begin work after April 30, 1983. Youth must be aged 16 or 17 and first hired by an employer between May 1 and September 15. Employers may claim a tax credit of 85 percent of the first \$3000 in wages paid for any 90-day period, between these dates.

NEW PROGRAM STRATEGIES

JOB CLUBS: The Job Club is an intensive group process approach to teaching effective job finding techniques to welfare recipients. The program stresses assertiveness, the success of past participants, and the marketability of desirable personal characteristics in addition to job skills as a basis for job finding.

At the start of the fiscal year, 20 Job Clubs were operating in eleven cities and towns across the State. By the beginning of February, efforts had expanded to 26 clubs in 13 locations.

The reduction in financial resources resulted in a loss of 20 of the 33 trained Job Club leaders. By March only 12 clubs were operating in eight locations. However, in anticipation of the changes, the WIN Administrative Unit developed a program to train new Job Club leaders. Twenty-two new leaders and seven back-up

leaders were trained by administrative staff. By the end of the fiscal year, 27 clubs were operating in 12 locations, with plans for 38 clubs 16 locations by September 30, 1983. The Job Clubs continued to have a high success rate, and at the end of the fiscal year, 54 percent of all WIN/WTP registrants who entered Job Clubs found employment.

DIRECTION FOR 1984

All signs on the national and state economic fronts indicate new challenges in the areas in which the Council is involved - employment and unemployment insurance. Funding, more effective administration of unemployment insurance, and the need for expanding employment opportunities should provide significant direction for more intensive activities. We look forward to Fiscal 1984 with a pledge of serious commitment to cooperation with the Division in meeting its objectives of more effective unemployment insurance administration and expansion of its role in the employment market. The Council will continue to make every effort to fulfill its responsibilities with a dynamic and active approach to its area of interest as defined in the Employment Security Law, Chapter 151A of the General Laws, Section 62. As the Massachusetts unemployment Insurance and Employment Service Divisions continue to play a vital role in improving the State's economy and the livelihood of its citizens, the Council will continue to serve them in its advisory capacity.

MASSACHUSETTS STATE
ADVISORY COUNCIL DIVISION OF EMPLOYMENT SECURITY

Purpose, Function and Guidelines

Section 62 Chapter 151A of the Massachusetts Employment Security Law describes the functions of the Advisory Council as follows:

"Functions. The state advisory council shall perform all duties imposed in it by this chapter, and, in addition, shall consider and advise the director upon all matters connected with this chapter. It shall have full investigatory powers, and shall have direct access to all sources of information relating to employment. It shall promote as far as possible the regularization of employment within the commonwealth. It shall also aid in the formation of policies related to the administration of this chapter as to insure a fair, impartial and neutral administration thereof, free from political influences.

It shall report to the governor at least quarterly, and to the general court annually and at such other times as the general court may require, its conclusions and recommendations with respect to the administration of this chapter. Said reports shall relate particularly to the actuarial status of the unemployment compensation fund and shall set forth such changes in or additions to this chapter with respect to contributions, benefits or other provisions thereof, as are, in its opinion necessary for maintaining the solvency of said fund. It shall also investigate and study all proposals for changes in or additions to the provisions of this chapter pending before the general court, including proposals made by the director,

and shall report to the general court its recommendations with respect thereto. Reports made by said council to the governor hereunder shall be open to public inspection." The general purpose and function of the Advisory Council are further stated in Part I, Section 4050 - 4051 of the Federal Employment Security Manual and reads as follows:

"Purpose. Effective development of policies and programs of the State employment security agencies requires the assistance of management, labor, and the public. The idea has been generally accepted that the groups concerned with the results of government programs and operations should advise in the development of policy. An advisory council composed of representatives of the interested groups has proved to be one of the best media for obtaining such advice. An effectively functioning State advisory council has unquestioned public relations value in contributing to common understanding and mutual trust. Such an advisory council rarely functions as a self-generating mechanism. Its driving force usually emanates from the administrator of the agency which it advises. The conditions of its success include the expenditure of time and effort, as well as imaginative planning by the administrator and his agency."

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1984
ANNUAL REPORT
of the
STATE ADVISORY COUNCIL
DIVISION OF EMPLOYMENT SECURITY

STATE OF MASSACHUSETTS

MEMBERSHIP OF THE
STATE ADVISORY COUNCIL DIVISION OF EMPLOYMENT SECURITY

Public Representatives

Donald G. Cacciapuoti, Chairman

Frank R. Debar

Employer Representatives

Joseph A. Dunn

John D. Rooney

Employee Representatives

John H. Markiewicz

Eleanor E. Wheeler

ORGANIZATION

The Advisory Council met weekly during 1983-84. The public is invited to attend Council meetings, in accordance with the open meeting law. The Advisory Council expresses its gratitude to the Executive Service for contributing to the Council meetings and to the Council's requests.

DES MAIN PURPOSE

- To administer unemployment insurance programs
- To operate an employment service
- To collect, analyze, and provide labor market information

These functions are closely interrelated and designed to reduce unemployment and its negative effects on both individuals and the economy.

RECOMMENDATIONS FOR THE 1984 LEGISLATION

The Council was regularly informed about state and federal legislation and was actively involved in the legislative initiatives. The Council researched and studied a total of 21 bills, 6 Senate and 15 House bills. The results of these reviews are in the following recommendations: 3 bills favored - 17 bills opposed, - 1 bill recommended for further study.

In conformance with its responsibilities as designated by Section 62 of Chapter 151A, General Laws, the Advisory Council reviewed and evaluated the proposals for amendments to the Employment Security Law pending before the 1984 session of the Great and General Court. As is further required, the Council submitted its recommendations to the appropriate Legislative Committee and recorded its positions on their bills.

1984 Legislation

A C RECOMMENDATIONS

H. 3054	AN ACT AMENDING THE EMPLOYMENT SECURITY LAW	AGAINST PASSAGE
H. 4539	AN ACT EXEMPTING CERTAIN PERSONS FROM THE WAITING PERIOD FOR UNEMPLOYMENT BENEFITS	AGAINST PASSAGE
S. 70	AN ACT EXTENDING UNEMPLOYMENT COMPENSATION BENEFITS TO WORKERS INVOLVED IN A STRIKE	AGAINST PASSAGE

LEGISLATION 1984RECOMMENDATIONS

S 116	AN ACT TO PROVIDE A MORE EQUITABLE DISQUALIFICATION UNDER THE EMPLOYMENT SECURITY LAW	AGAINST PASSAGE
S 146	AN ACT RELATIVE TO ELIGIBILITY FOR UNEMPLOYMENT BENEFITS	AGAINST PASSAGE
S 185	AN ACT PROVIDING FOR EMERGENCY STATE SUPPLEMENTARY UNEMPLOYMENT BENEFITS.	AGAINST PASSAGE
S 145	AN ACT EXEMPTING STUDENTS EMPLOYED IN ORGANIZED CAMPS FROM THE EMPLOYMENT SECURITY LAW	AGAINST PASSAGE
H 4840	AN ACT MAKING PART-TIME SEASONAL WORKERS INELIGIBLE FOR UNEMPLOYMENT COMPENSATION BENEFITS	AGAINST PASSAGE
H 3068	AN ACT MODERNIZING THE NAME OF THE DIVISION OF EMPLOYMENT SECURITY	FOR PASSAGE
H 3042	AN ACT TO AID IN THE COLLECTION OF CERTAIN PAYMENTS DUE THE DIVISION OF EMPLOYMENT SECURITY	FURTHER STUDY
H 1707	AN ACT TO MITIGATE THE EFFECTS OF MASSACHUSETTS UNEMPLOYMENT AND ECONOMIC HARDSHIP FROM MASS TERMINATION OF EMPLOYEES BY PROVIDING FOR ADVANCE NOTIFICATION AND ASSISTANCE TO AFFECTED COMMUNITIES AND EMPLOYEES	AGAINST PASSAGE
H 3029	AN ACT AMENDING THE EMPLOYMENT SECURITY LAW TO PROVIDE FOR WORK SHARING BENEFITS	AGAINST PASSAGE
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LEGISLATION 1984RECOMMENDATIONS

H 3044	RESOLVE PROVIDING FOR AN INVESTIGATION AND STUDY BY A SPECIAL COMMISSION RELATIVE TO THE FINANCING PROVISIONS OF THE UNEMPLOYMENT COMPENSATION PROGRAM	AGAINST PASSAGE
H 625	RESOLVE PROVIDING FOR AN INVESTIGATION AND STUDY BY A SPECIAL COMMISSION RELATIVE TO THE FINANCING PROVISIONS OF THE UNEMPLOYMENT COMPENSATION PROGRAM	FOR PASSAGE

RULES AND REGULATIONS

The Advisory Council and members of the Legal Department reviewed and discussed regulations under # 430 CMR 4:11 which is titled "Payment of Retroactive Unemployment Benefits Under Section 28A(b) of G.L 151A. These are regulations which apply to any person who performed services for an educational service agency performing services in any capacity other than an instructional, research or principal administrative capacity and who has filed a claim for retroactive unemployment benefits. Amendments were added to these by the Director of Unemployment Security. The renumbering and additions of regulations 4.94(d) and regulation 4 97(4) were the finally approved changes. The Council decided to approve the amendments and changes by a 4 to 0 vote.

TRUST FUND

The Advisory Council, with its deadlines and demands, maintained its continuing goals toward fiscal fulfillment of its objectives, and in turn considered the status of the Unemployment Fund.

The balance of the Unemployment Insurance Trust Fund at the end of each quarter in FY'84 is listed as follows:

September 30, 1983	\$489,906,787.64
December 31, 1984	\$519,907,428.37
March 31, 1984	\$480,175,669.74
June 30, 1984	\$658,503,684.

During FY'83 the Trust Fund balance ended with \$438,113,673. FY'84 shows a substantial increase to \$658,503,684.

The Council agreed that both Federal and State governments have important responsibilities for unemployment compensation. Each state maintains an account in the Unemployment Trust Fund, and the moneys , are payable upon demand. An original Federal standard requires that they may be withdrawn only for the purpose of paying unemployment benefits. Another Federal requirement is that States permit employers reduced rates only on the basis of their experience with unemployment. This experience rating standard has had an important influence on the program. Recent Federal requirements touch areas where the need for uniformity is questionable, e.g., one Federal standard requires that all States deny benefits to professional athletes during the off-season if they have contracts during the next season. Extended benefits are financed, 50-50 Federal/State basis. The Council agreed a major responsibility is to finance all the Federal and State Administrative costs of unemployment compensation to insure that funds granted to the states for administration are expended properly and efficiently. The Department of Labor exercises substantial control over State Administrative activities. The Council concluded that unemployment compensation has been one of America's most successful social insurance programs to provide unemployed workers the means of getting through a temporary period of involuntary unemployment without having to turn to welfare and without having to face a need test.

TRIGGER FOR EXTENDED BENEFITS

There is a growing disparity between the Insured Unemployment Rate used for triggering Extended Benefits, and the total Unemployment Rate. The number of new and continuing claims for unemployment compensation has declined with improvements in the employment future, but in some states the percentage of exhaustives has risen. As a consequence of these and other factors, unemployment compensation benefits are being paid to a smaller percentage of individuals who consider themselves unemployed, compared to previous recessions.

The Council reviewed the question of when and for what duration of unemployment, employers should be required to insure their employees and whether the total Unemployment Rate has been any validity as a trigger measure. The Council noted that analysts have been unable to provide a conclusive reason for the growing divergence between Insured Unemployment Rate and Total Unemployment Rate.

The Council agreed that any changes in the Extended Benefits Trigger should be accompanied by reforms, possibly along the lines of restrictions on the "optional" trigger.

MASSACHUSETTS UNEMPLOYMENT

The Council kept close watch through the year on the gradual decline of unemployment, its effect on the economy and the actions of DES to maintain this. For the fiscal year beginning with September 30 1983, the Massachusetts unemployment rate stood at 7.2%. The December 31st, 1983 jobless rate was 6.4%. For the end of March, the 31st, 1984, the rate declined to 5.3%. Finally by June 30, 1984 the unemployment rate

dipped to 3.9%. This showing is better overall than before 1970.

At the end of this fiscal year we have more at work, 2,943,000 than ever before in our history. The number of unemployed in June of '84, 118,000 is the lowest since 1970. Within 3 quarters, we have had the lowest rate of any industrial state.

The strength of the 1983 recovery and the anticipated federal spending has contributed immensely to the relatively good economy of 1984. The average unemployment so far this year is running at 5.1% versus a 7.2% average rate for the first six months of 1983. The United States for June 1984 has a rate of 7.5%. Overall, the United States last year in June was 10.0%.

FEDERAL-STATE EXTENDED BENEFIT PROGRAM

The Council devoted portions of several meeting to study S. 1784, introduced by Senator Robert Byrd. This bill would completely restructure the income maintenance system, currently utilized to aid the long-term unemployed in periods of high unemployment. It would lengthen potential duration expand the triggering mechanism and shift a much greater share of the financing burden to employers. This bill would repeal the Federal Supplemental Compensation Act and completely revise the Federal-State Extended Benefit Program.

EXPERIENCE RATING

Massachusetts adopted a new surtax to raise funds to be used to support economic development in the Commonwealth. For calendar year 1984, the amended law specifies, that experience rates will range from 1.6% to 5.1% . A surtax was added in the amount of .2% of taxable

wages. up to \$14 per employee. This tax will be deposited in a newly created Economic Development Fund. The monies in this fund will be used to support economic development within the Commonwealth including but not limited to activities and programs concerned with skills, training and education consistent with employment needs, capital formation, tourist promotion, and industrial promotion and development.

FEDERAL UNEMPLOYMENT TAX CREDITS

The Council discussed throughout the fiscal year the subject of Federal Unemployment Tax Credits for 1985 and thereafter under recent amendments to Federal laws on what amendments are needed for state laws, as a result of the increase in the Federal taxable wage base to \$7000 with respect to wages paid for employment in 1983 and thereafter. This is with the increase in the gross Federal tax and in the ceiling on total allowable credits against the Federal unemployment tax with respect to wages paid for employment in 1985 and thereafter. There is a section called, "Federal Unemployment Tax Credits and Experience Rating," which the Council has recently reviewed. It is numbered 3302(a) which in effect permits employers of a state with an approved law to credit against the Federal unemployment fund at a rate base than the rate at which credit is allowable pursuant to Section 3302(a), commonly know as. "normal credit", and through such reduced rates were equal to the rate at which normal credit is allowable. The Council found that it is apparent from the description of the Federal law. provisions governing the allowance of additional credit and experience rating that the emphasis is upon the rates of contributions assessed subject employees. An example of this would be when the

taxable wage base remains at \$6000 all employers who pay contributions at rates lower than 3.1 will lose a portion of allowable normal credit of only 2.7% on taxable wages of \$6000.

DIRECTIONS FOR 1985

The Advisory Council optimistically looks to the future in hope for higher employment and continuous unemployment insurance. With the unemployment rate and trust fund at their best positions since the early 70's, the Council feels they have a good foundation. Through legislation, study of regulation changes sent via the Director and any other way in which they can help, their part of contribution bands together with DES to keep matters on the upswing. The Council will continue to make every effort to fulfill its responsibilities with a dynamic and active approach to its area of the General Laws, Section 62. As the Massachusetts unemployment Insurance and Employment Service Divisions continue to play a vital role in improving the State's economy and the livelihood of its citizens, the Council will continue to serve them in its advisory capacity.

MASSACHUSETTS STATE
ADVISORY COUNCIL DIVISION OF EMPLOYMENT SECURITY

Purpose, Function and Guidelines

Section 62 Chapter 151A of the Massachusetts Employment Security Law describes the functions of the Advisory Council as follows:

Functions. The state advisory council shall perform all duties imposed in it by this chapter, and, in addition, shall consider and advise the director upon all matters connected with this chapter. It shall have full investigatory powers, and shall have direct access to all sources of information relating to employment. It shall promote as far as possible the regularization of employment policies related to the administration of this chapter as to insure a fair, impartial and neutral administration thereof, free from political influences.

It shall report to the governor at least quarterly, and to the general court annually and at such other times as the general court may require, its conclusions and recommendations with respect to the administration of this chapter. Said reports shall relate particularly to the actuarial status of the unemployment compensation fund and shall set forth such changes in or additions to this chapter with as are, in its opinion necessary for maintaining the solvency of said fund. It shall also investigate and study all proposals for changes on or additions to the provisions of this chapter pending before the general court, including proposals made by the director, and shall report to the general court its recommendations with respect thereto. Reports made by said council to the governor

and shall report to the general court its recommendations with respect thereto. Reports made by said council to the governor hereunder shall be open to public inspection." The general purpose and function of the Advisory Council are further stated in Part I, Section 4050 - 4051 of the Federal Employment Security Manual and reads as follows:

"Purpose . Effective development of policies and programs of the management, labor, and the public. The idea has been generally programs and operations should advise in the development of policy. An advisory council composed of representatives of the interested groups has proved to be one of the best media for obtaining such advice. An effectively functioning State advisory council has understanding and mutual trust. Such an advisory council rarely functions as a self-generating mechanism. Its driving force advises. The conditions of its success include the expenditure of time and effort, as well as imaginative planning by the administrator and his agency."

